

TECHNICAL AMENDMENT
May 4, 2018

405 KAR 12:010. General provisions for inspection and enforcement.

RELATES TO: KRS 350.020, 350.028, 350.050, 350.085, 350.113, 350.130, 350.151, 350.465, 350.990, 30 C.F.R. Parts 730-733, 735, 840.11-.16, 917, 30 U.S.C. 1253, 1255, 1267

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.050, 350.130, 350.465, 30 C.F.R. Parts 730-733, 735, 840.11-.16, 917, 30 U.S.C. 1253, 1255, 1267

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to rigidly enforce administrative regulations promulgated to control the injurious effects of surface coal mining and reclamation operations. This administrative regulation generally sets forth a rigid enforcement and inspection policy for the cabinet. This administrative regulation directs that inspections be made at irregular intervals and without need of a warrant or prior notice to the permittee, operator, or person. This administrative regulation requires certain frequencies for inspections and complete preservation of the evidence, records and observations made during inspections. This administrative regulation also sets forth the general policy of public participation in the enforcement process and references the civil and criminal penalties of KRS Chapter 350.

Section 1. Applicability. The provisions of this chapter shall apply to all surface coal mining and reclamation operations and coal exploration and reclamation operations.

Section 2. Inspection and Enforcement. In accordance with the provisions of this chapter, the cabinet shall conduct or cause to be conducted inspections, studies, investigations, or other determinations as it deems reasonable and necessary to obtain information and evidence with which to ensure that surface coal mining and reclamation operations and coal exploration and reclamation operations are conducted in accordance with the provisions of KRS Chapter 350; 405 KAR Chapters 7 through 24; and all terms and conditions of the applicable permit or approval.

Section 3. Timing and Conduct of Inspections. (1) Right of entry and access. Authorized representatives of the cabinet shall:

(a) Have unrestricted right of entry and access to areas affected by coal exploration and reclamation operations and areas affected by surface coal mining and reclamation operations for any purpose associated with their proper duties pursuant to KRS Chapter 350 or 405 KAR including but not limited to activities associated with the conducting of inspections; and

(b) At reasonable times and without delay, have unrestricted access to and authority to copy any records required to be kept under KRS Chapter 350 and 405 KAR and have unrestricted access to, for the purpose of inspecting, any monitoring equipment required under or pursuant to KRS Chapter 350 or 405 KAR.

(2) Presentation of credentials. Authorized representatives of the cabinet shall present credentials for identification purposes upon request by a representative of the permittee, operator or person conducting the coal exploration and reclamation operations on the affected area.

(3) Prior notice. The cabinet shall have no obligation to give prior notice that an inspection will be conducted.

(4) Timing. Inspections shall ordinarily be conducted at irregular and unscheduled times during normal workdays, but may be conducted at night or on weekends or holidays if the cabinet deems the inspections necessary to properly monitor compliance with KRS Chapter 350; 405 KAR Chapters 7 through 24; and terms and conditions of the applicable permit or approval.

(5) Frequency of inspections.

(a) Partial inspections of surface coal mining and reclamation operations. A partial inspection of surface coal mining and reclamation operations is an on-site or aerial review of a permittee, operator, or person's compliance with some of the permit terms and conditions and some of the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24. Unless the cabinet has received notice of temporary cessation under 405 KAR 16:010, Section 7, or 405 KAR 18:010, Section 5, the cabinet shall conduct an average of at least one (1) partial inspection per month of each area affected by surface coal mining and reclamation operations permitted under 405 KAR Chapter 8 at least until phase I reclamation, as determined under 405 KAR 10:040, has been completed on the entire permit area. After phase I reclamation, or if the cabinet has received notice of temporary cessation, the cabinet shall conduct partial inspections until the cabinet determines that the permit area is sufficiently stable with respect to mass stability, erosion, revegetation, water quality and other reclamation requirements so that the quarterly complete inspections required under paragraph (b) of this subsection will provide adequate inspection of the permit area.

(b) Complete inspections of surface coal mining and reclamation operations. A complete inspection of surface coal mining and reclamation operations is an on-site review of a permittee, operator, or person's compliance with all of the permit terms and conditions and all of the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24 within the entire area disturbed or affected by surface coal mining and reclamation operations. The cabinet shall conduct an average of at least one (1) complete inspection per calendar quarter of each area affected by surface coal mining and reclamation operations permitted under 405 KAR Chapter 8.

(c) The cabinet shall conduct inspections of coal exploration and reclamation operations as necessary to ensure compliance with KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(6) Aerial inspections.

(a) Aerial inspections shall be conducted in a manner that reasonably insures the identification and documentation of conditions at each surface coal mining and reclamation site and each coal exploration and reclamation site inspected.

(b) Any potential violation observed during an aerial inspection shall be investigated on site within three (3) days provided that any indication of a condition, practice, or violation constituting cause for the issuance of a cessation order under 405 KAR 12:020, Section 3(1)(b) and (c) shall be investigated on site immediately and provided further that an aerial inspection which necessitates an on-site inspection of a potential violation shall not be considered to be an additional partial inspection for the purposes of subsection (5) of the section.

Section 4. Records of Inspections. (1) Authorized representatives of the cabinet shall make and maintain written records of inspections and other activities including observations made and factual matters discovered. A copy of the records shall be made available to the permittee, operator, or person conducting the coal exploration and reclamation operations and shall be available for public inspection at the appropriate regional office of the department in accordance with the Kentucky Open Record Laws, KRS 61.870 through KRS 61.884, until at least five (5) years after final bond release on the entire permit area or until at least five (5) years after bond forfeiture. For unpermitted areas, the cabinet shall maintain the records until at least five (5) years after the final action of the cabinet regarding the operations.

(2)(a) For permitted areas for which final bond release has been granted pursuant to 405 KAR Chapter 10; for areas for which bond has been forfeited pursuant to 405 KAR Chapter 10; and for unpermitted areas for which the cabinet has taken final action, the cabinet may, at its own option and expense and as an alternative to maintaining the information for public inspection at the location identified in accordance with subsection (1) of this section, retain information at a location other than the department's appropriate regional office and, at the request of any person:

1. Provide copies of the information promptly by mail to the person; or

2. Transfer the information to the department's appropriate regional office for public inspection.

(b) For situations in which the cabinet provides information in accordance with this subsection, the cabinet shall maintain, for public inspection at the department's appropriate regional office, a description of the information available for mailing or submission to the appropriate regional office and the procedures to be used for obtaining the information.

(3) Upon inspection of coal exploration and reclamation operations and surface coal mining and reclamation operations, authorized representatives of the cabinet shall collect evidence of every observed violation of a permit term or condition, every observed violation of a term or condition of approval (for coal exploration and reclamation operations requiring cabinet approval), and every observed violation of a requirement of KRS Chapter 350 or an administrative regulation promulgated pursuant thereto.

(4) The cabinet shall preserve evidence collected pursuant to subsection (3) of this section where appropriate in order that the evidence may be presented at hearings held pursuant to 400 KAR 1:110~~[405 KAR 7:092]~~.

Section 5. Penalties and Sanctions. Any person who violates any provision of KRS Chapter 350; any provision of 405 KAR Chapters 7 through 24; any permit term or condition; or any term or condition of approval (for coal exploration and reclamation operations requiring cabinet approval) and any person who fails to perform the duties imposed by these provisions or who fails to comply with a determination or order of the cabinet pursuant to these provisions shall be subject to civil and criminal penalties as set forth in KRS 350.465(3)(h), KRS 350.990, 400 KAR 1:110~~[405 KAR 7:092]~~, and any other applicable provision of law and shall be subject to applicable sanctions as set forth in KRS 350.130 or any other applicable provision of law. Violations by any person conducting surface coal mining and reclamation operations on behalf of a permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage. Violations by any person conducting coal exploration and reclamation operations shall be attributed to the person conducting the coal exploration and reclamation operations or the person identified in the notice of intention to explore or in the application for coal exploration and reclamation approval submitted pursuant to 405 KAR 8:020, unless the person establishes that they were acts of deliberate sabotage.

Section 6. Public Participation. Any person shall have the opportunity to request an inspection and to participate in enforcement actions of the cabinet as provided in 405 KAR 12:030.

Section 7. Formal Review. Any person having an interest which is or may be adversely affected by the issuance, modification, vacation, or termination of a notice or order may request review of that action pursuant to 400 KAR 1:110~~[405 KAR 7:092]~~. The filing of a request for a hearing shall not operate as a stay of any notice or order or any modification, termination, or vacation thereof. (8 Ky.R. 1522; 9 Ky.R. 697; eff. 1-6-1983; 11 Ky.R. 1831; eff. 8-13-1985; 20 Ky.R. 137; eff. 9-22-1993; TAm eff. 5-4-2018.)